

110TH CONGRESS
2D SESSION

S. 2756

To amend the National Child Protection Act of 1993 to establish a permanent background check system.

IN THE SENATE OF THE UNITED STATES

MARCH 13, 2008

Mr. BIDEN (for himself, Mr. HATCH, and Mr. SPECTER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

APRIL 1 (legislative day, MARCH 13), 2008

Committee discharged; referred to the Committee on the Judiciary

A BILL

To amend the National Child Protection Act of 1993 to establish a permanent background check system.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Child Protection Im-
5 provements Act of 2008”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) In 2006, 61,200,000 adults (a total of 26.7
2 percent of the population) contributed a total of
3 8,100,000,000 hours of volunteer service. Of those
4 who volunteer, 27 percent dedicate their service to
5 education or youth programs, or a total of
6 16,500,000 adults.

7 (2) Assuming recent incarceration rates remain
8 unchanged, an estimated 6.6 percent of individuals
9 in the United States will serve time in prison for a
10 crime during their lifetime. The Integrated Auto-
11 mated Fingerprint Identification System of the Fed-
12 eral Bureau of Investigation maintains fingerprints
13 and criminal histories on more than 47,000,000 in-
14 dividuals, many of whom have been arrested or con-
15 victed multiple times.

16 (3) A study released in 2002, found that, of in-
17 dividuals released from prison in 15 States in 1994,
18 an estimated 67.5 percent were rearrested for a fel-
19 ony or serious misdemeanor within 3 years. Three-
20 quarters of those new arrests resulted in convictions
21 or a new prison sentence.

22 (4) Given the large number of individuals with
23 criminal records and the vulnerability of the popu-
24 lation they work with, human service organizations
25 that work with children need an effective and reli-

1 able means of obtaining a complete criminal history
2 in order to determine the suitability of a potential
3 volunteer or employee.

4 (5) The large majority of Americans (88 per-
5 cent) favor granting youth-serving organizations ac-
6 cess to conviction records for screening volunteers
7 and 59 percent favored allowing youth-serving orga-
8 nizations to consider arrest records when screening
9 volunteers. This was the only use for which a major-
10 ity of those surveyed favored granting access to ar-
11 rest records.

12 (6) Congress has previously attempted to en-
13 sure that States make Federal Bureau of Investiga-
14 tion criminal history record checks available to orga-
15 nizations seeking to screen employees and volunteers
16 who work with children, the elderly, and individuals
17 with disabilities, through the National Child Protec-
18 tion Act of 1993 (42 U.S.C. 5119 et seq.) and the
19 Volunteers for Children Act (Public Law 105–251;
20 112 Stat. 1885). However, according to a June
21 2006 report from the Attorney General, these laws
22 “did not have the intended impact of broadening the
23 availability of NCPA checks”. A 2007 survey con-
24 ducted by MENTOR/National Mentoring Partner-
25 ship found that only 18 States allowed youth men-

1 toring organizations to access nationwide Federal
2 Bureau of Investigation background searches.

3 (7) Even when accessible, the cost of a criminal
4 background check can be prohibitively expensive,
5 ranging from \$5 to \$75 for a State fingerprint
6 check, plus the Federal Bureau of Investigation fee,
7 which ranges between \$16 to \$24, for a total of be-
8 tween \$21 and \$99 for each volunteer or employee.

9 (8) Delays in processing such checks can also
10 limit their utility. While the Federal Bureau of In-
11 vestigation processes all civil fingerprint requests in
12 less than 24 hours, State response times vary widely,
13 and can take as long as 42 days.

14 (9) The Child Safety Pilot Program under sec-
15 tion 108 of the PROTECT Act (42 U.S.C. 5119a
16 note) revealed the importance of performing finger-
17 print-based Federal Bureau of Investigation criminal
18 history record checks. Of 29,000 background checks
19 performed through the pilot as of March 2007, 6.4
20 percent of volunteers were found to have a criminal
21 record of concern, including very serious offenses
22 such as sexual abuse of minors, assault, child cru-
23 elty, murder, and serious drug offenses.

24 (10) In an analysis performed on the volunteers
25 screened in the first 18 months of the Child Safety

1 Pilot Program, it was found that over 25 percent of
2 the individuals with criminal records had committed
3 an offense in a State other than the State in which
4 they were applying to volunteer, meaning that a
5 State-only search would not have found relevant
6 criminal results. In addition, even though volunteers
7 knew a background check was being performed, over
8 50 percent of the individuals found to have a crimi-
9 nal record falsely indicated on their application form
10 that they did not have a criminal record.

11 (11) The Child Safety Pilot Program also dem-
12 onstrates that timely and affordable background
13 checks are possible, as background checks under
14 that program are completed within 3 to 5 business
15 days at a cost of \$18.

16 **SEC. 3. BACKGROUND CHECKS.**

17 The National Child Protection Act of 1993 (42
18 U.S.C. 5119 et seq.) is amended—

19 (1) by redesignating section 5 as section 6; and

20 (2) by inserting after section 4 the following:

21 **“SEC. 5. PROGRAM FOR NATIONAL CRIMINAL HISTORY**
22 **BACKGROUND CHECKS FOR CHILD-SERVING**
23 **ORGANIZATIONS.**

24 “(a) DEFINITIONS.—In this section—

1 “(1) the term ‘applicant processing center’
2 means the applicant processing center established by
3 the Attorney General under subsection (b)(1);

4 “(2) the term ‘child’ means an individual who
5 is less than 18 years of age;

6 “(3) the term ‘covered entity’ means a business
7 or organization, whether public, private, for-profit,
8 nonprofit, or voluntary that provides care, care
9 placement, supervision, treatment, education, train-
10 ing, instruction, or recreation to children, including
11 a business or organization that licenses, certifies, or
12 coordinates individuals or organizations to provide
13 care, care placement, supervision, treatment, edu-
14 cation, training, instruction or recreation to children;

15 “(4) the term ‘covered individual’ means an in-
16 dividual—

17 “(A) who has, seeks to have, or may have
18 unsupervised access to a child served by a cov-
19 ered entity; and

20 “(B) who—

21 “(i) is employed by or volunteers with,
22 or seeks to be employed by or volunteer
23 with, a covered entity; or

24 “(ii) owns or operates, or seeks to
25 own or operate, a covered entity;

1 “(5) the term ‘fitness determination program’
2 means the fitness determination program established
3 under subsection (b)(2);

4 “(6) the term ‘identification document’ has the
5 meaning given that term in section 1028 of title 18,
6 United States Code;

7 “(7) the term ‘participating entity’ means a
8 covered entity that is approved under subsection (f)
9 to receive nationwide background checks from the
10 applicant processing center and to participate in the
11 fitness determination program;

12 “(8) the term ‘State’ means a State of the
13 United States, the District of Columbia, the Com-
14 monwealth of Puerto Rico, American Samoa, the
15 Virgin Islands, Guam, the Commonwealth of the
16 Northern Mariana Islands, the Federated States of
17 Micronesia, the Republic of the Marshall Islands,
18 and the Republic of Palau; and

19 “(9) the term ‘State authorized agency’ means
20 a division or office of a State designated by that
21 State to report, receive, or disseminate criminal his-
22 tory information.

23 “(b) ESTABLISHMENT OF PROGRAM.—Not later than
24 90 days after the date of enactment of the Child Protec-

1 tion Improvements Act of 2008, the Attorney General
2 shall—

3 “(1) establish within the Federal Government
4 or through an agreement with a nonprofit entity an
5 applicant processing center; and

6 “(2) enter into an agreement with the National
7 Center for Missing and Exploited Children, under
8 which the National Center for Missing and Exploited
9 Children shall establish a fitness determination pro-
10 gram.

11 “(c) APPLICANT PROCESSING CENTER.—

12 “(1) PURPOSE.—The purpose of the applicant
13 processing center is to streamline the process of ob-
14 taining nationwide background checks, provide effec-
15 tive customer service, and facilitate widespread ac-
16 cess to nationwide background checks by partici-
17 pating entities.

18 “(2) DUTIES.—The applicant processing center
19 shall—

20 “(A) provide information to covered enti-
21 ties on the requirements to become a partici-
22 pating entity;

23 “(B) provide participating entities with ac-
24 cess to nationwide background checks on cov-
25 ered individuals;

1 “(C) receive paper and electronic requests
2 for nationwide background checks on covered
3 individuals from participating entities;

4 “(D) serve as a national resource center to
5 provide guidance and assistance to participating
6 entities on how to submit requests for nation-
7 wide background checks, how to interpret crimi-
8 nal history records, how to obtain State crimi-
9 nal background checks, and other related infor-
10 mation;

11 “(E) to the extent practicable, negotiate an
12 agreement with each State authorized agency
13 under which—

14 “(i) that State authorized agency shall
15 conduct a State criminal background check
16 within the time periods specified in sub-
17 section (e) in response to a request from
18 the applicant processing center and provide
19 criminal history records to the National
20 Center for Missing and Exploited Children;
21 and

22 “(ii) a participating entity may elect
23 to obtain a State background check, in ad-
24 dition to a nationwide background check,

1 through 1 unified request to the applicant
2 processing center;

3 “(F) convert all paper fingerprint cards
4 into an electronic form and securely transmit
5 all fingerprints electronically to the national
6 criminal history background check system and,
7 if appropriate, the State authorized agencies;

8 “(G) collect a fee to conduct the nation-
9 wide background check, and, if appropriate, a
10 State criminal background check, and remit
11 fees to the National Center for Missing and Ex-
12 ploited Children, the Federal Bureau of Inves-
13 tigation, and the State authorized agencies, as
14 appropriate;

15 “(H) convey the results of the fitness de-
16 termination to the participating entity that sub-
17 mitted the request for a nationwide background
18 check; and

19 “(I) coordinate with the Federal Bureau of
20 Investigation, participating State authorized
21 agencies, and the National Center for Missing
22 and Exploited Children to ensure that back-
23 ground check requests are being completed
24 within the time periods specified in subsection
25 (e).

1 “(3) REQUESTS.—A request for a nationwide
2 background check by a participating entity shall in-
3 clude—

4 “(A) the fingerprints of the covered indi-
5 vidual, in paper or electronic form;

6 “(B) a photocopy of a valid identification
7 document; and

8 “(C) a statement completed and signed by
9 the covered individual that—

10 “(i) sets out the covered individual’s
11 name, address, and date of birth, as those
12 items of information appear on a valid
13 identification document;

14 “(ii) states whether the covered indi-
15 vidual has a criminal record, and, if so,
16 provides the particulars of such criminal
17 record;

18 “(iii) notifies the covered individual
19 that the Attorney General and, if appro-
20 priate, a State authorized agency may per-
21 form a criminal history background check
22 and that the signature of the covered indi-
23 vidual on the statement constitutes an ac-
24 knowledgment that such a check may be
25 conducted;

1 “(iv) notifies the covered individual
2 that prior to and after the completion of
3 the background check, the participating
4 entity may choose to deny the covered indi-
5 vidual access to children; and

6 “(v) notifies the covered individual of
7 the right of the covered individual to cor-
8 rect an erroneous record of the Attorney
9 General and, if appropriate, the State au-
10 thorized agency.

11 “(4) FEES.—

12 “(A) IN GENERAL.—The applicant proc-
13 essing center may collect a fee to defray the
14 costs of carrying out its duties and the duties
15 of the National Center for Missing and Ex-
16 ploited Children under this section—

17 “(i) for a nationwide background
18 check and fitness determination, in an
19 amount not to exceed the lesser of—

20 “(I) the actual cost to the appli-
21 cant processing center and the Na-
22 tional Center for Missing and Ex-
23 ploited Children of conducting a na-
24 tionwide background check and fitness
25 determination under this section; or

1 “(II)(aa) \$25 for a participating
2 entity that is a nonprofit entity; or

3 “(bb) \$40 for any other partici-
4 pating entity; and

5 “(ii) for a State criminal background
6 check described in paragraph (2)(E), in
7 the amount specified in the agreement with
8 the applicable State authorized agency, not
9 to exceed \$18.

10 “(B) REDUCED FEES.—In determining the
11 amount of the fees to be collected under sub-
12 paragraph (A), the applicant processing cen-
13 ter—

14 “(i) shall, to the extent possible, dis-
15 count such fees for participating entities
16 that are nonprofit entities; and

17 “(ii) may use fees paid by partici-
18 pating entities that are not nonprofit enti-
19 ties to reduce the fees to be paid by par-
20 ticipating entities that are nonprofit enti-
21 ties.

22 “(C) PROHIBITION ON FEES.—

23 “(i) IN GENERAL.—A participating
24 entity may not charge another entity or in-

1 dividual a surcharge to access a back-
2 ground check conducted under this section.

3 “(ii) VIOLATION.—The Attorney Gen-
4 eral shall bar any participating entity that
5 the Attorney General determines violated
6 clause (i) from submitting background
7 checks under this section.

8 “(d) FITNESS DETERMINATION PROGRAM.—

9 “(1) PURPOSE.—The purpose of the fitness de-
10 termination program is to provide participating enti-
11 ties with reliable and accurate information regarding
12 whether a covered individual has been convicted of,
13 or is under pending arrest or indictment for, a crime
14 that bears upon the fitness of the covered individual
15 to have responsibility for the safety and well-being of
16 the children in their care.

17 “(2) REQUIREMENTS OF FITNESS DETERMINA-
18 TION PROGRAM.—As part of operating the fitness
19 determination program, the National Center for
20 Missing and Exploited Children shall—

21 “(A) establish procedures to securely re-
22 ceive criminal background records from the
23 Federal Bureau of Investigation and, if appro-
24 priate, State authorized agencies;

1 “(B) make determinations regarding
2 whether the criminal history record information
3 received in response to a criminal history back-
4 ground check conducted under this section indi-
5 cate that the covered individual has a criminal
6 history record that may render the covered indi-
7 vidual unfit to provide care to children, based
8 on the criteria described in paragraph (3);

9 “(C) convey a fitness determination to the
10 applicant processing center;

11 “(D) specify the source of the criminal his-
12 tory information upon which a fitness deter-
13 mination is based; and

14 “(E) work with the applicant processing
15 center and the Federal Bureau of Investigation
16 to develop procedures and processes to ensure
17 that criminal history background check requests
18 are being completed within the time periods
19 specified in subsection (e).

20 “(3) CRITERIA.—

21 “(A) IN GENERAL.—Subject to subpara-
22 graph (B), the fitness determination program
23 shall use the criteria relating to when criminal
24 history record information indicates that an in-
25 dividual has a criminal history record that may

1 render the individual unfit to provide care to
2 children that were established for the Child
3 Safety Pilot Program under section 108(a)(3)
4 of the PROTECT Act (42 U.S.C. 5119a note).

5 “(B) REVIEW.—The Attorney General and
6 the National Center for Missing and Exploited
7 Children, in coordination with national organi-
8 zations representing a range of covered entities,
9 shall review the criteria described in subpara-
10 graph (A) and make any changes needed to use
11 such criteria in the fitness determination pro-
12 gram.

13 “(e) TIMING.—

14 “(1) IN GENERAL.—Criminal background
15 checks shall be completed not later than 10 business
16 days after the date that a request for a national
17 background check is received by the applicant proc-
18 essing center. The applicant processing center shall
19 work with the National Center for Missing and Ex-
20 ploited Children and the Federal Bureau of Inves-
21 tigation to ensure that the time limits under this
22 subsection are being achieved.

23 “(2) APPLICATION PROCESSING.—The applicant
24 processing center shall electronically submit a na-
25 tional background check request to the national

1 criminal history background check system and, if ap-
2 propriate, the participating State authorized agency
3 not later than 3 business days after the date that a
4 request for a national background check is received
5 by the applicant processing center.

6 “(3) CONDUCT OF BACKGROUND CHECKS.—The
7 Federal Bureau of Investigation and, if appropriate,
8 a State authorized agency shall provide criminal his-
9 tory records information to the National Center for
10 Missing and Exploited Children not later than 3
11 business days after the date that the Federal Bu-
12 reau of Investigation or State authorized agency, as
13 the case may be, receives a request for a nationwide
14 background check from the applicant processing cen-
15 ter.

16 “(4) FITNESS DETERMINATIONS.—The Na-
17 tional Center for Missing and Exploited Children
18 shall convey a fitness determination to a partici-
19 pating entity and the applicant processing center not
20 later than 4 business days after the date that the
21 National Center for Missing and Exploited Children
22 has received criminal history records from the Fed-
23 eral Bureau of Investigation and, if appropriate,
24 each applicable State authorized agency.

25 “(f) PARTICIPATION IN PROGRAM.—

1 “(1) IN GENERAL.—The applicant processing
2 center shall determine whether an entity is a covered
3 entity and whether that covered entity should be ap-
4 proved as a participating entity, based on the con-
5 sultation conducted under paragraph (2).

6 “(2) CONSULTATION.—In determining how
7 many covered entities to approve as participating en-
8 tities, the applicant processing center shall consult
9 quarterly with the Federal Bureau of Investigation
10 and the National Center for Missing and Exploited
11 Children to determine the volume of requests for fit-
12 ness determinations that can be completed, based on
13 the capacity of the applicant processing center and
14 the fitness determination program, the availability of
15 resources, and the demonstrated need for such de-
16 terminations in order to protect children.

17 “(3) PREFERENCE FOR NONPROFIT ORGANIZA-
18 TIONS.—In determining whether a covered entity
19 should be approved as a participating entity under
20 paragraph (1), the applicant processing center shall
21 give preference to any organization participating in
22 the Child Safety Pilot Program under section
23 108(a)(3) of the PROTECT Act (42 U.S.C. 5119a
24 note) on the date of enactment of the Child Protec-

1 tion Improvements Act of 2008 and to any other
2 nonprofit organizations.

3 “(g) RIGHTS OF COVERED INDIVIDUALS.—

4 “(1) IN GENERAL.—A covered individual who is
5 the subject of a nationwide background check under
6 this section may contact the Federal Bureau of In-
7 vestigation and, if appropriate, a State authorized
8 agency to—

9 “(A) request that the full criminal history
10 report of that covered individual be provided to
11 that covered individual or the applicable partici-
12 pating entity not later than 10 business days
13 after the date of that request; and

14 “(B) challenge the accuracy and complete-
15 ness of the criminal history record information
16 in the criminal history report.

17 “(2) RESOLUTION OF CHALLENGES.—The Fed-
18 eral Bureau of Investigation and, if appropriate, a
19 State authorized agency shall promptly make a de-
20 termination regarding the accuracy and complete-
21 ness of any criminal history record information chal-
22 lenged under paragraph (1)(B).

23 “(h) AUTHORIZATION OF APPROPRIATIONS.—

1 “(1) IN GENERAL.—There are authorized to be
2 appropriated to the Attorney General \$5,000,000 for
3 fiscal year 2008, to—

4 “(A) establish and carry out the duties of
5 the applicant processing center established
6 under this section;

7 “(B) establish and carry out the fitness de-
8 termination program; and

9 “(C) pursue technologies and procedures to
10 streamline and automate processes to enhance
11 cost efficiency.

12 “(2) FITNESS DETERMINATIONS.—There are
13 authorized to be appropriated to the Attorney Gen-
14 eral to carry out the agreement under this section
15 with the National Center for Missing and Exploited
16 Children \$1,000,000 for each of fiscal years 2009
17 through 2013 to support the fitness determination
18 program and so that fees for nonprofit organizations
19 under that program are as low as possible.

20 “(3) SENSE OF THE SENATE.—It is the sense
21 of the Senate that in fiscal year 2009, and each fis-
22 cal year thereafter, the fees collected by the appli-
23 cant processing center should be sufficient to carry
24 out the duties of the applicant processing center

1 under this section and to help support the fitness de-
2 termination program.

3 “(i) REPORT TO CONGRESS.—The Attorney General
4 shall, on an annual basis, submit to Congress a report on
5 the participating entities, the number of covered individ-
6 uals submitting applications under this section, and the
7 data on the number and types of fitness determinations
8 issued under this section.

9 “(j) LIMITATION ON LIABILITY.—

10 “(1) IN GENERAL.—A participating entity shall
11 not be liable in an action for damages solely for fail-
12 ure to conduct a criminal background check on a
13 covered individual, nor shall a State or political sub-
14 division thereof nor any agency, officer, or employee
15 thereof, be liable in an action for damages for the
16 failure of a participating entity (other than itself) to
17 take action adverse to a covered individual who was
18 the subject of a background check.

19 “(2) RELIANCE.—The applicant processing cen-
20 ter or a participating entity that reasonably relies on
21 a fitness determination or criminal history record in-
22 formation received in response to a background
23 check under this section shall not be liable in an ac-
24 tion for damages based on the inaccuracy or incom-
25 pleteness of that information.

1 “(3) NATIONAL CENTER FOR MISSING AND EX-
2 PLOITED CHILDREN.—

3 “(A) IN GENERAL.—Except as provided in
4 subparagraphs (B) and (C), the National Cen-
5 ter for Missing and Exploited Children, includ-
6 ing a director, officer, employee, or agent of the
7 National Center for Missing and Exploited Chil-
8 dren, shall not be liable in an action for dam-
9 ages relating to the performance of the respon-
10 sibilities and functions of the National Center
11 for Missing and Exploited Children under this
12 section.

13 “(B) INTENTIONAL, RECKLESS, OR OTHER
14 MISCONDUCT.—Subparagraph (A) shall not
15 apply in an action if the National Center for
16 Missing and Exploited Children, or a director,
17 officer, employee, or agent of the National Cen-
18 ter for Missing and Exploited Children, engaged
19 in intentional misconduct or acted, or failed to
20 act, with actual malice, with reckless disregard
21 to a substantial risk of causing injury without
22 legal justification, or for a purpose unrelated to
23 the performance of responsibilities or functions
24 under this section.

1 “(C) ORDINARY BUSINESS ACTIVITIES.—
2 Subparagraph (A) shall not apply to an act or
3 omission relating to an ordinary business activ-
4 ity, such as an activity involving general admin-
5 istration or operations, the use of motor vehi-
6 cles, or personnel management.”.

7 **SEC. 4. EXTENSION OF CHILD SAFETY PILOT.**

8 Section 108(a)(3)(A) of the PROTECT Act (42
9 U.S.C. 5119a note) is amended—

10 (1) by striking “60-month”; and

11 (2) by adding at the end the following: “The
12 Child Safety Pilot Program under this paragraph
13 shall terminate on the date that the program for na-
14 tional criminal history background checks for child-
15 serving organizations established under the Child
16 Protection Improvements Act of 2008 is operating
17 and able to enroll any organization using the Child
18 Safety Pilot Program.”.

○